

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE**

ADRIAN McPHERSON,)	
)	Case No. 3:07-cv-0002
Plaintiff,)	
)	Judge Haynes
vs.)	Magistrate Judge Griffin
)	
TENNESSEE FOOTBALL, INC.,)	
d/b/a TENNESSEE TITANS,)	JURY DEMAND
)	
Defendant.)	

MOTION TO DISMISS

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Tennessee Football, Inc. d/b/a The Tennessee Titans (“the Titans”) moves the Court to dismiss the Complaint filed by Plaintiff Adrian McPherson (“McPherson”) seeking damages for his injuries incurred in the course and scope of his employment as a professional football player for the New Orleans Saints during a game against the Titans. McPherson’s Complaint fails to state a claim upon which relief can be granted because his tort claim is preempted completely by Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. The resolution of his averred claim is substantially dependent upon an interpretation of, and is inextricably intertwined with, the NFL Collective Bargaining Agreement (“CBA”), to which both McPherson and the Titans are bound.

The CBA requires McPherson to resolve any injury claim against the Titans through its grievance procedure, which culminates in final and binding arbitration, and this Court should enforce the promises to which the parties' respective bargaining agents have agreed. McPherson received all the compensation for his injuries incurred in the performance of his professional duties for which his union bargained under the no-fault provisions of the CBA. His Complaint seeks an unwarranted and unbargained-for second bite at the compensation apple. Because McPherson's claim against the Titans must be resolved by binding arbitration as provided in the CBA, rather than through the judicial system, his Complaint fails to state a claim upon which this Court can grant relief and should be dismissed as a matter of law.

In support of its Motion to Dismiss, the Titans rely upon the pleadings and the contemporaneously submitted Memorandum of Law and Affidavits of Steve Underwood and Mickey Loomis.

s/Mark W. Peters

Robert E. Boston, Tenn. BPR # 9744

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served electronically, by operation of the Court's electronic filing system, upon James R. Krenis, Hill-Boren PC, 191 Jefferson Avenue, Memphis, Tennessee 38103, on this the 31st day of January, 2007.

s/Mark W. Peters

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